IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8814 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMVTAR ROSHANLAL AGARAWAL

Versus

MAMLATDAR

Appearance:

MR MH RATHOD for Petitioner

MRS SIDDHI TALATI for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 29/03/2001

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Article 227 read with Articles 14 and 19 of the Constitution of India.

2. The petitioner was elected as Sarpanch of Ambaji Gram Panchayat on 1st January 1986 and held his post upto 22nd March 1992. Although on the expiry of his tenure, and although fresh elections had been held in the meanwhile, he continued to hold the post due to interim orders of the Court.

3. One Shri K.B. Dave, Senior Accounts Clerk, who was an employee of the Gram Panchayat was due to retire on 30th September 1986, and since he had applied for extension of his service, the question was required to be considered by the Panchayat. The petitioner in his capacity as a Sarpanch, sought directions from the District Panchayat by his communication dated 1st August 1986. It appears that on 6th September 1986 the District Panchayat advised the petitioner that the question of extension is within the discretion of the Gram Panchayat, and hence the petitioner, after following the due procedure and ascertaining the fitness of the proposed person who was to retire, extended the services of the said person.

4. Another employee by the name of Shri Barot who was at that point of time the Water Works Supervisor, sought an extension of his term by communication dated 5th December 1991. In this case as well the petitioner followed the due procedure, invited the administrative comments as regards the fitness of the person, considered that no replacement for the retiring employee Shri Barot was available, and then extended the services of Shri Barot only for a period of six months. This decision was taken by the Panchayat on 17th December 1991 and as a result of this decision, the petitioner in his capacity as a Sarpanch, issued the necessary order on 3rd January 1992.

5. The petitioner's tenure as Sarpanch had expired on 22nd March 1992. Almost a year later on 8th February 1993 the District Panchayat issued a show-cause notice to the petitioner under section 49(1) of the Gujarat Panchayats Act, 1961 to show cause as to why he should not be removed as a Sarpanch and as a Member for his act of granting extension to the term of Shri Barot. The petitioner replied to the said show-cause notice explaining the unavoidable circumstances and pointed out the various precedents.

6. The District Panchayat accepted the explanation of the petitioner and on 8th February 1993 dropped the proceedings against the petitioner. However, on 29th March 1993 the Mamlatdar, Danta, issued a show-cause

notice to the petitioner (Annexure-G to the petition) purporting to act in the exercise of powers conferred upon him under section 317 of the said Act, and called upon the petitioner to show-cause as to why a sum of Rs.12859.70 should not be directed to be paid by the petitioner to the Panchayat on account of the loss sustained by the Panchayat due to extension of the services of Shri Barot.

7. The petitioner replied to the aforesaid show-cause notice. However, the Mamlatdar did not accept the explanation of the petitioner and passed an order directing the petitioner to pay up the amount failing which recovery would be made from him. The order of the Mamlatdar which is the subject matter of challenge in the present petition is at Annexure-B to the petition. Being aggrieved by the said order the petitioner preferred an appeal which was numbered as Civil Misc. Application No.198/94 before the District Court, Banaskanta, which was rejected by the District Court by judgement and order dated 20th September 1999. This order is at Annexure-A to the present petition.

8. The petitioner, therefore, has preferred the present petition challenging the order of the Mamlatdar at Annexure-B and confirmed by the order of the District Judge, Banaskanta at Annexure-A to the petition.

9. Before proceeding with the merits of the matter I must note that I am conscious of the limitations of this court while exercising powers under Article 227 of the Constitution of India. I am conscious that this court while dealing with such petitions cannot enter into the appreciation of the evidence nor interfere with the findings of fact recorded by the fora below. However, the learned counsel for the petitioner has raised a fundamental point touching the jurisdiction of the Mamlatdar to initiate action against the petitioner.

10. It was contended that the Mamlatdar has initiated action against the petitioner in exercise of the powers conferred upon the Mamlatdar under section 317 of the Gujarat Panchayats Act, 1961. There cannot be any controversy as to the source of this power inasmuch as the same has been specifically asserted by the Mamlatdar in the show-cause notice issued by him to the petitioner at Annexure-G to the petition.

11. In this context it was specifically urged that section 317, subsection (2) authorises proceedings to be taken in consequence of orders passed only by "an officer

authorised by the State Government". This specific clause is found in subsection (2) of section 317 of the said Act, which reads as under:

> "(2) If after giving the member concerned a reasonable opportunity for showing cause to the contrary, an officer authorised by the State Government is satisfied that the loss, waste or misapplication of any money or other property of the panchayat is a direct consequence of misconduct or gross negligence on his part, the officer so authorised, shall by an order in writing, direct such member to pay to the panchayat before a fixed date, the amount required to be reimbursed to it for such loss, waste or misapplication."

In this context it was urged that the Mamlatdar was not an officer authorised by the State Government either to initiate such action or to pass consequential orders.

12. As aforesaid, I have permitted the petitioner to raise the point in the present petition although this contention had not been raised before the fora below, only because it goes to the root of the matter and affects the jurisdiction of the officer who passed the order.

13. In order to support the orders passed by the Mamlatdar, learned Assistant Government Pleader seeks to rely upon a notification issued by the Panchayats and Rural Housing Department dated 26th July 1994, published in Gujarat Government Gazette Extraordinary, issued on 26th July 1994. No doubt, the said notification confers power on the Mamlatdar (in case of Village Panchayats), but since the notification was published on 26th July 1994, the conferment of such power is in exercise of powers conferred by sub-section (1) of section 271 of the Gujarat Panchayats Act, 1993. Obviously this notification deals with conferment of power under various provisions of the Act of 1993 and not with the powers exercised under the Act of 1961. This notification therefore would be of no assistance to the respondents.

14. Learned counsel for the respondent-State is unable to point out or to refer to any other notification under which the Mamlatdar has been conferred with the power to initiate action under section 317(2) of the said Act of 1961.

15. It would, therefore, appear that the Mamlatdar

had exercised the powers and had passed the impugned order at Annexure-B to the petition, acting only on administrative directions or otherwise, without drawing his authority from any source in law. Consequently the order passed by the District Court confirming the order of the Mamlatdar is of no effect or consequence. Consequently, this petition must be allowed on this short question alone.

16. Accordingly the impugned orders at Annexures B and A to the petition are quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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